

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CIVIL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, December 16, 2016.]

Ace American Ins. Co. v. Fireman's Fund Ins. Co., S237175. (B264861; 2 Cal.App.5th 159; Los Angeles County Superior Court; BC559203.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: When a primary insurer unreasonably refuses to settle an underlying action against its insured within policy limits and the underlying action later settles for the full amount of the primary policy as well as the full amount of an excess insurer's policy, can the excess insurer maintain an equitable subrogation action against the primary insurer to recover the amount it expended in settlement?

Alvarado v. Dart Container Corp. of California, S232607. (E061645; 243 Cal.App.4th 1200; Riverside County Superior Court; RIC1211707.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: What is the proper method for calculating the rate of overtime pay when an employee receives both an hourly wage and a flat sum bonus?

American Civil Liberties Union Foundation of Southern California v. Superior Court, S227106. (B259392; 236 Cal.App.4th 673; Los Angeles County Superior Court; BS143004.) Petition for review after the Court of Appeal denied a petition for writ of mandate. This case presents the following issue: Does information collected by police using "automated license plate readers" — high-speed cameras that automatically scan and record the license plate numbers and time, date and location of every passing vehicle without suspicion of criminal activity — constitute law enforcement "records of . . . investigations" that are permanently exempt from disclosure under the Public Records Act in accordance with Government Code section 6254, subdivision (f)?

Association of California Ins. Companies v. Jones, S226529. (B248622; 235 Cal.App.4th 1009; Los Angeles County Superior Court; BC463124.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does the Unfair Insurance Practices Act (Ins. Code, § 790, et seq.) give the Insurance Commissioner authority to promulgate a regulation that sets forth requirements for communicating replacement value and states that noncompliance with the regulation constitutes a misleading statement, and therefore an unfair trade practice, for purposes of the act? (2) Does the Insurance Commissioner have the statutory authority to promulgate a regulation specifying that the communication of a replacement cost estimate that omits one or more of the components in subdivisions (a)-(e) of section 2695.183 of title 10 of the California Code of Regulations is a “misleading” statement with respect to the business of insurance? (Cal. Code of Regs., tit. 10, § 2695.183, subd. (j).)

Augustus v. ABM Security Services, Inc., S224853. (B243788; 233 Cal.App.4th 1065; Los Angeles County Superior Court; BC336416, BC345918, CG5444421.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Do Labor Code, § 226.7, and Industrial Welfare Commission wage order No. 4-2001 require that employees be relieved of all duties during rest breaks? (2) Are security guards who remain on call during rest breaks performing work during that time under the analysis of *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833?

Banning Ranch Conservancy v. City of Newport Beach, S227473. (G049691; 236 Cal.App.4th 1341; Orange County Superior Court; 30-2012-00593557.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Did the City’s approval of the project at issue comport with the directives in its general plan to “coordinate with” and “work with” the California Coastal Commission to identify habitats for preservation, restoration, or development prior to project approval? (2) What standard of review should apply to a city’s interpretation of its general plan? (3) Was the city required to identify environmentally sensitive habitat areas — as defined in the California Coastal Act of 1976 (Pub. Resources Code, § 3000, et seq.) — in the environmental impact report for the project?

Barry v. State Bar of California, S214058. (B242054; 218 Cal.App.4th 1435; Los Angeles County Superior Court; BC452239.) Petition for review after the Court of Appeal reversed an order awarding attorney fees in a civil action. This case presents the following issue: If the trial court grants a special motion to strike under Code of Civil Procedure section 425.16 on the ground that the plaintiff has no probability of prevailing on the merits because the court lacks subject matter jurisdiction over the underlying dispute, does the court have the authority to award the prevailing party the attorney fees mandated by section 425.16, subdivision (c)?

Bianka M. v. Superior Court, S233757. (B267454; 245 Cal.App.4th 406; Los Angeles County Superior Court; BF052072.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did the trial court err in denying petitioner's request for an order making findings concerning Special Immigrant Juvenile status (8 U.S.C. § 1101(a)(27)(J); see Code Civ. Proc., § 155) and placing her in her mother's sole legal and physical custody?

California Building Industry Assn. v. State Water Resources Control Bd., S226753. (A137680; 235 Cal.App.4th 1430, mod. 236 Cal.App.4th 529a; San Francisco County Superior Court; CGC11516510.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Does Water Code section 181 permit the State Water Resources Control Board to approve its annual fee under the waste discharge permit program by a majority of the quorum? (2) Does Proposition 26 apply to the waste discharge permit program fee? (3) Does the Board have the initial burden of demonstrating the validity of its fee? (4) Is the fee, which is based on balancing the fees and costs of the waste discharge permit program, an invalid tax unless it separately balances the fees and costs of each of the eight program areas within the program?

California Cannabis Coalition v. City of Upland. S234148. (E063664; 245 Cal.App.4th 970; San Bernardino County Superior Court; CIVDS1503985.) Petition for review after the Court of Appeal reversed the judgment in an action for administrative mandate. This case includes the following issue: Is a proposed initiative measure that would impose a tax subject to the requirement of California Constitution, article XIII C, section 2 that taxes "imposed by local government" be placed on the ballot at a general election?

Carmack v. Reynolds, S224985. (9th Cir. No. 12-60068; 779 F.3d 1028; Central District of California; BAP No. 11-1433, Bankr. Case No. 09-14039-MJ, Adversary Case No. 09-01205-MJ.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: "Does section 15306.5 of the California Probate Code impose an absolute cap of 25 percent on a bankruptcy estate's access to a beneficiary's interest in a spendthrift trust that consists entirely of payments from principal, or may the bankruptcy estate reach more than 25 percent under other sections of the Probate Code?"

Central Coast Forest Assn. v. Fish & Game Com., S208181. (C060569; 211 Cal.App.4th 1433; Sacramento County Superior Court; 07CS00851.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issues: (1) Under the California Endangered Species Act, Fish and Game Code section 2050 et seq., may the Fish and Game Commission consider a petition to delist a species on the ground that the original listing was in error? (2) If so, does the petition at issue here contain sufficient information to warrant the Commission's further consideration?

Citizens for Fair REU Rates v. City of Redding, S224779. (C071906; 233 Cal.App.4th 402, mod. 233 Cal.App.4th 1479a; Shasta County Superior Court; 171377.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Is a payment in lieu of taxes (PILOT) transferred from the city utility to the city general fund a "tax" under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (1)(e))? (2) Does the exception for "reasonable costs to the local government of providing the service or product" apply to the PILOT (Cal. Const., art. XIII C, § 1, subd. (1)(e)(2))? (3) Does the PILOT predate Proposition 26?

City of San Buenaventura v. United Water Conservation Dist., S226036. (B251810; 235 Cal.App.4th 228, mod. 235 Cal.App.4th 956b; Santa Barbara County Superior Court; VENCI00401714, VENCI1414739.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Do the District's ground water pumping charges violate Proposition 218 or Proposition 26? (2) Does the rate ratio mandated by Water Code section 75594 violate Proposition 218 or Proposition 26?

City of San Jose v. Superior Court, S218066. (H039498; 225 Cal.App.4th 75, mod. 225 Cal.App.4th 568c; Santa Clara County Superior Court; CV150427.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Are written communications pertaining to city business, including email and text messages, which (a) are sent or received by public officials and employees on their private electronic devices using their private accounts, (b) are not stored on city servers, and (c) are not directly accessible by the city, "public records" within the meaning of the California Public Records Act?

Cleveland National Forest Foundation v. San Diego Assn. of Governments, S223603. (D063288; 231 Cal.App.4th 1056, mod. 231 Cal.App.4th 1437a; San Diego County Superior Court; 37-2011-00101593-CU-TT-CTL, 37-2011-00101660-CU-TT-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05, so as to comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)?

Connor v. First Student, Inc., S229428. (B256075; 239 Cal.App.4th 526; Los Angeles County Superior Court; JCCP4624.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Is the Investigative Consumer Reporting Agencies Act (Civ. Code, § 1786 et seq.) unconstitutionally vague as applied to background checks conducted on a company's employees, because persons and entities subject to both that Act and the Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1 et seq.) cannot determine which statute applies?

County of Los Angeles v. Financial Casualty & Surety Inc., S230213. (B257660; 240 Cal.App.4th 535; Los Angeles County Superior Court; SJ3898.) Petition for review after the Court of Appeal affirmed an order granting a motion to vacate the forfeiture of a bail bond in a criminal case. The court limited review to the following issue: Does the authority granted a jailer under Penal Code section 1269b "to set the time and place for the appearance of the arrested person before the appropriate court and give notice thereof" make the appearance in that court on that date "lawfully required" for purposes of forfeiting bail under Penal Code section 1305, subdivision (a)(4)?

Delano Farms Co. v. California Table Grape Com., S226538. (F067956; 235 Cal.App.4th 967; Fresno County Superior Court; 636636-3, 642546, 01CECG01127, 01CECG02289, 01CECG02292, 11CECG00178.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Under Article 1, section 2, subdivision (a), of the California Constitution, can the California Table Grape Commission compel unwilling produce growers to contribute for generic commercial advertising?

Dhillon v. John Muir Health, S224472. (A143195; nonpublished opinion; Contra Costa County Superior Court; .) Petition for review after the Court of Appeal dismissed an appeal from an order on a petition for writ of administrative mandate. This case presents the following issue: Is a trial court order granting in part and denying in part a physician's petition for writ of administrative mandate regarding a hospital's disciplinary action and remanding the matter to the hospital for further administrative proceedings an appealable order?

DisputeSuite.com, LLC v. Scoreinc.com, S226652. (B248694; 235 Cal.App.4th 1261, mod. 236 Cal.App.4th 529e; Los Angeles County Superior Court; BC489083.) Petition for review after the Court of Appeal affirmed an order denying an award of attorney fees in a civil action. This case presents the following issue: Were defendants entitled to an award of attorney fees under Civil Code section 1717 as the prevailing parties in an action on a contract when they obtained the dismissal of the action on procedural grounds pursuant to a Florida forum selection clause?

Dynamex Operations West, Inc. v. Superior Court, S222732. (B249546; 230 Cal.App.4th 718; Los Angeles County Superior Court; C332016.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. This case presents the following issue: In a wage and hour class action involving claims that the plaintiffs were misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definition of employee as construed in *Martinez v. Combs* (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 control?

F.P. v. Monier, S216566. (C062329; 222 Cal.App.4th 1087; Sacramento County Superior Court; 06AS00671.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Is a trial court's error in failing to issue a statement of decision upon a timely request reversible per se?

Flethez v. San Bernardino County Employees Retirement Assn., S226779. (D066959; 236 Cal.App.4th 65; San Bernardino County Superior Court; CIVDS1212542.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issue: If a retroactive award of service-connected disability retirement benefits is made in an administrative mandate proceeding, is prejudgment interest under Code of Civil Procedure section 3287 calculated from the day after the employee's last day of regular compensation or the day on which the employee submitted the claim for the benefits?

Friends of the Eel River v. North Coast Railroad Authority, S222472. (A139222; 230 Cal.App.4th 85; Marin County Superior Court; CV1103591, CV1103605.) Petition for review after the Court of Appeal affirmed the judgments in actions for writ of administrative mandate. This case includes the following issues: (1) Does the Interstate Commerce Commission Termination Act [ICCTA] (49 U.S.C. § 10101 et seq.) preempt the application of the California Environmental Quality Act [CEQA] (Pub. Res. Code, § 21050 et seq.) to a state agency's proprietary acts with respect to a state-owned and funded rail line or is CEQA not preempted in such circumstances under the market participant doctrine (see *Town of Atherton v. California High Speed Rail Authority* (2014) 228 Cal.App.4th 314)? (2) Does the ICCTA preempt a state agency's voluntary commitments to comply with CEQA as a condition of receiving state funds for a state-owned rail line and/or leasing state-owned property?

Gerawan Farming, Inc. v. Agricultural Labor Relations Bd., S227243. (F068526, F068676; 236 Cal.App.4th 1024; Fresno County Superior Court; 13CECG01408.) Petitions for review after the Court of Appeal reversed a decision of the Agricultural Labor Relations Board and denied a petition for peremptory writ of mandate. This case presents the following issues: (1) Does the statutory “Mandatory Mediation and Conciliation” process (Lab. Code, §§ 1164-1164.13) violate the equal protection clauses of the state and federal Constitutions? (2) Do the “Mandatory Mediation and Conciliation” statutes effect an unconstitutional delegation of legislative power? (3) May an employer oppose a certified union’s request for referral to the “Mandatory Mediation and Conciliation” process by asserting that the union has “abandoned” the bargaining unit?

Hamilton v. Yates, S226450. (F069608; nonpublished opinion; Fresno County Superior Court; 10CECG03520.) Petition for review after the Court of Appeal affirmed an order dismissing a civil action. This case presents the following issues: (1) Did the trial court err in concluding that there was no means of affording the indigent prisoner plaintiff in this case access to the courts to pursue his civil action? (2) Did the trial court err by dismissing the action for the plaintiff’s failure to appear in such circumstances?

Hassell v. Bird, S235968. (A143233; 247 Cal.App.4th 1336; San Francisco County Superior Court; CGC13530525.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does an on-line publisher have a right to notice and an opportunity to be heard before a trial court orders removal of on-line content? (2) Does the statutory immunity provided by 47 U.S.C. 230(c)(1) and (e)(3) bar a trial court from enjoining a website publisher’s actions and potentially enforcing the court’s order by way of contempt or other sanctions?

Hayward v. Superior Court, S237174. (A144823; 2 Cal.App.5th 10; Napa County Superior Court; 2655470.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case includes the following issues: (1) Does a party waive disqualification of a temporary judge when counsel is aware of a potential conflict and proceeds with the temporary judge presiding? (See *People v. Johnson* (2015) 60 Cal.4th 966.) (2) May an appellate court set aside a settlement agreement on the ground that a disqualified judge’s rulings “tainted” the settlement as a matter of law when factual questions exist concerning the extent to which those rulings influenced a party’s decision to settle?

Heckart v. A-1 Self Storage, Inc., S232322. (D066831; 243 Cal.App.4th 525; San Diego County Superior Court; 37-2013-00042315-CU-BT-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Was a self-storage facility's storage rental agreement, which included provisions arguably meeting the definition of "insurance" (see Ins. Code, §§ 22, 1758.75), subject to regulation under the Insurance Code when the principal purpose of the agreement between the parties was the rental of storage space rather than the shifting and distribution of risk?

Heller Ehrman LLP v. Davis Wright Tremaine LLP, S236208. (9th Cir. Nos. 14-16314, 14-16315, 14-16317, 14-16318; ___ F.3d ___, 2016 WL 4011194; Northern District of California; Nos. 3:14-cv-01236-CRB, 3:14-cv-01237-CRB, 3:14-cv-01238-CRB, 3:14-cv-01239-CRB.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the question presented is: "Under California law, what interest, if any, does a dissolved law firm have in legal matters that are in progress but not completed at the time the law firm is dissolved, when the dissolved law firm had been retained to handle the matters on an hourly basis?"

Hernandez v. Muller, S233983. (D067091; 245 Cal.App.4th 651; San Diego County Superior Court; 37-2008-00094395-CU-BT-CTL.) Petition for review after the Court of Appeal dismissed an appeal in a civil action. This case presents the following issue: Must an unnamed class member intervene in the litigation in order to have standing to appeal? (See *Eggert v. Pac. States S. & L. Co.* (1942) 20 Cal.2d 199.)

In re I.C., S229276. (A141143; 239 Cal.App.4th 304; Alameda County Superior Court; SJ12019578.) Petition for review after the Court of Appeal affirmed orders in a juvenile dependency proceeding. This case presents the following issues: (1) Did the juvenile court err by failing to determine whether the truthfulness of the minor as a hearsay declarant was "so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility" as required by *In re Lucero L.* (2000) 22 Cal.4th 1227? (2) Did the Court of Appeal err by affirming the trial court's jurisdictional finding without reviewing the entire record for substantial evidence of the minor's clear truthfulness?

J.M. v. Huntington Beach Union High School Dist., S230510. (G049773; 240 Cal.App.4th 1019; Orange County Superior Court; 30-2013-00684104.) Petition for review after the Court of Appeal affirmed an order denying a petition for relief under the Government Claims Act (Gov. Code, § 810, et seq.). The court limited review to the following issues: Must a claimant under the Government Claims Act file a petition for relief from Government Code section 945.4's claim requirement, as set forth in Government Code section 946.6, if he has submitted a timely application for leave to present a late claim under Government Code section 911.6, subdivision (b)(2), and was a minor at all relevant times?

Jacks v. City of Santa Barbara, S225589. (B253474; 234 Cal.App.4th 925; Santa Barbara County Superior Court; 1383959.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: Is the City of Santa Barbara's 1 percent increase on its electricity bills (i.e., the 1 percent surcharge) a tax subject to Proposition 218's voter approval requirement or a franchise fee that may be imposed by the City without voter consent?

Jameson v. Desta, S230899. (D066793; 241 Cal.App.4th 491; San Diego County Superior Court; GIS9465.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: In the case of a litigant who has been granted a fee waiver (Gov. Code, § 68631), can a county's superior court employ a policy that has the practical effect of denying the services of an official court reporter to civil litigants who have been granted such a fee waiver, if the result is to preclude those litigants from procuring and providing a verbatim transcript for appellate review?

Kabran v. Sharp Memorial Hospital, S227393. (D064133; 236 Cal.App.4th 1294; San Diego County Superior Court; 37-2010-00083678-CU-PO-CTL.) Petition for review after the Court of Appeal affirmed an order granting a new trial in a civil action. This case presents the following issue: Are the time constraints in California Code of Civil Procedure section 659a jurisdictional such that a court cannot consider late-filed documents?

Kim v. Toyota Motor Corp., S232754. (B247672; 243 Cal.App.4th 1366, mod. 244 Cal.App.4th 643b; Los Angeles County Superior Court; VC059206.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Is evidence of industry custom and practice admissible in a strict products liability action?

King v. CompPartners, Inc., S232197. (E063527; 243 Cal.App.4th 685; Riverside County Superior Court; RIC1409797.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Is a claim by an injured worker for medical malpractice brought against a workers' compensation utilization review company barred by workers' compensation as the exclusive remedy? (2) Does a workers' compensation utilization review company that performs medical utilization reviews on behalf of employers owe a duty of care to an injured worker? (3) Did the CA err in finding that plaintiffs should be given leave to amend their complaint in this case?

Kurwa v. Kislinger, S234617. (B264641; nonpublished opinion; Los Angeles County Superior Court; KC045216.) Petition for review after the Court of Appeal dismissed an appeal in a civil action. This case presents the following issue: Can plaintiff take an appeal in the current posture of this litigation?

Leider v. Lewis, S232622. (B244414; 243 Cal.App.4th 1078, mod. 244 Cal.App.4th 643c; Los Angeles County Superior Court; BC375234.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issues: (1) Does Civil Code section 3369 bar taxpayer actions brought under the authority of Code of Civil Procedure section 526a seeking to enjoin violations of Penal Code provisions concerning animal abuse? (2) Does the law of the case doctrine foreclose petitioners' reliance upon that legal argument in this appeal?

Lewis v. Superior Court, S219811. (B252032; 226 Cal.App.4th 933; Los Angeles County Superior Court; BS139289.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Do a physician's patients have a protected privacy interest in the controlled substance prescription data collected and submitted to the California Department of Justice under Health and Safety Code section 11165? (2) If so, is disclosure of such data to the Medical Board of California justified by a compelling state interest?

Liberty Surplus Ins. Corp. v. Ledesma & Meyers Construction Co., Inc., S236765. (9th Cir. No. 14-56120; ___ F.3d ___, 2016 WL 4434589; Central District of California; No. 2:12-cv-00900-RGK-SP.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: "Whether there is an 'occurrence' under an employer's commercial general liability policy when an injured third party brings claims against the employer for the negligent hiring, retention, and supervision of the employee who intentionally injured the third party."

Lopez v. Sony Electronics, Inc., S235357. (B256792; 247 Cal.App.4th 444; Los Angeles County Superior Court; BC476544.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does the six-year limitations period in Code of Civil Procedure section 340.4, which governs actions based on birth and pre-birth injuries and is not subject to tolling for minority, or the two-year limitations period in Code of Civil Procedure section 340.8, which applies to actions for injury based upon exposure to a toxic substance and is subject to tolling for minority, govern an action alleging pre-birth injuries due to exposure to a toxic substance?

Los Angeles County Bd. of Supervisors v. Superior Court, S226645. (B257230; 235 Cal.App.4th 1154; Los Angeles County Superior Court; BS145753.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Are invoices for legal services sent to the County of Los Angeles by outside counsel within the scope of the attorney-client privilege and exempt from disclosure under the California Public Records Act, even with all references to attorney opinions, advice and similar information redacted?

Lynch v. California Coastal Com., S221980. (D064120; 229 Cal.App.4th 658; San Diego County Superior Court; 37-2011-00058666-CU-WM-NC.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Did plaintiffs, who objected in writing and orally to certain conditions contained within a coastal development permit approved by defendant California Coastal Commission and who filed a petition for writ of mandate (Code Civ. Proc., § 1094.5) challenging those conditions, waive their right to challenge the conditions by subsequently executing and recording deed restrictions recognizing the existence of the conditions and constructing the project as approved? (2) Did the permit condition allowing plaintiffs to construct a seawall on their property, but requiring them to apply for a new permit in 20 years or to remove the seawall, violate Public Resources Code section 30235 or the federal Constitution? (3) Were plaintiffs required to obtain a permit to reconstruct the bottom portion of a bluff-to-beach staircase that had been destroyed by a series of winter storms, or was that portion of the project exempt from permitting requirements pursuant to Public Resources Code section 30610, subdivision (g)(1)?

McGill v. Citibank, N.A., S224086. (G049838; 232 Cal.App.4th 753; Riverside County Superior Court; .RIC1109398) Petition for review after the Court of Appeal reversed an order denying a petition to compel arbitration in a civil action. This case presents the following issue: Does the Federal Arbitration Act (9 U.S.C. § 1 et seq.), as interpreted in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 321, preempt the California rule (*Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066; *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303) that statutory claims for public injunctive relief are not subject to compulsory private arbitration?

McMillin Albany LLC v. Superior Court, S229762. (F069370; 239 Cal.App.4th 1132; Kern County Superior Court; CV279141DRL.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does the Right to Repair Act (Civ. Code, § 895 et seq.) preclude a homeowner from bringing common law causes of action for defective conditions that resulted in physical damage to the home?

Mendoza v. Nordstrom, S224611. (9th Cir., No. 12-57130; 778 F.3d 834, Central District of California; 8:10-cv-00109-CJC-MLG.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: “(A) California Labor Code section 551 provides that ‘[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.’ Is the required day of rest calculated by the workweek, or is it calculated on a rolling basis for any consecutive seven-day period? (B) California Labor Code section 556 exempts employers from providing such a day of rest ‘when the total hours of employment do not exceed 30 hours in any week *or six hours in any one day thereof.*’ (Emphasis added.) Does that exemption apply when an employee works less than six hours in any one day of the applicable week, or does it apply only when an employee works less than six hours in each day of the week? (C) California Labor Code section 552 provides that an employer may not ‘cause his employees to work more than six days in seven.’ What does it mean for an employer to ‘cause’ an employee to work more than six days in seven: force, coerce, pressure, schedule, encourage, reward, permit, or something else?”

Migdal Insurance Co. v. Insurance Co. of the State of Pennsylvania, S236177. (2nd Cir. No. 15-2588-cv; ___ Fed.Appx. ___, 2016 WL 3639102; Southern District of New York; No. 1:14-cv-00700-JPO-SN.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Second Circuit. As restated by the court, the questions presented are: (1) When two primary liability insurers agree that their policies cover the same loss, may the primary insurer whose policy contains an “other insurance” clause (stating that its insurance is excess over any “other insurance or . . . self-insurance plan that covers a loss on the same basis”) enforce that clause in an action for equitable contribution brought by the primary insurer who defended and settled the insured’s claim and whose policy does not contain an other-insurance clause? (2) In the same equitable contribution action described in Issue 1, when the amount paid by the primary insurer that settled the claim exceeds the non-settling primary insurer’s liability policy limits, what is the effect, if any, of the non-settling insurer’s “limits reduction” clause (stating that “[a]ll payments made under any local policy issued to [the insured] by us or any other insurance company will reduce the Limits of Insurance of this policy”)?

Mountain Air Enterprises, LLC v. Sundowner Towers, LLC, S223536. (A138306; 231 Cal.App.4th 805; Marin County Superior Court; CIV081957.) Petition for review after the Court of Appeal reversed an order denying attorney fees in a civil action. This case includes the following issues: (1) Does the assertion of an agreement as an affirmative defense implicate the attorney fee provision in that agreement? (2) Does the term “action” or “proceeding” in Civil Code section 1717 and in attorney fee provisions encompass the assertion of an affirmative defense?

926 North Ardmore Avenue v. County of Los Angeles, S222329. (B248536; 229 Cal.App.4th 1335; Los Angeles County Superior Court; BC476670.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does Revenue and Taxation Code section 11911 authorize a county to impose a documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property?

Park v. Board of Trustees of California State University, S229728. (B260047; 239 Cal.App.4th 1258; Los Angeles County Superior Court; BC546792.) Petition for review after the Court of Appeal reversed an order denying a special motion to strike in a civil action. This case presents the following issue: Does Code of Civil Procedure section 425.16 authorize a court to strike a cause of action in which the plaintiff challenges only *the validity of an action* taken by a public entity in an “official proceeding authorized by law” (subd. (e)) but does not seek relief against any participant in that proceeding based on his or her protected communications?

Parrish v. Latham & Watkins, S228277. (B244841; 238 Cal.App.4th 81; Los Angeles County Superior Court; BC482394.) Petition for review after the Court of Appeal affirmed an order granting a special motion to strike in a civil action. This case presents the following issue: Does the denial of former employees’ motion for summary judgment in an action for misappropriation of trade secrets conclusively establish that their former employer had probable cause to bring the action and thus preclude their subsequent action for malicious prosecution, even if the trial court in the prior action later found that it had been brought in bad faith?

People v. Miami National Enterprises, S216878. (B242644; 223 Cal.App.4th 21; Los Angeles County Superior Court; BC373536.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Is a payday loan company owned by a federally recognized Indian tribe entitled to tribal sovereign immunity, and thus exempt from state regulation, if the day-to-day management of the business is handled by a third party management company that is not affiliated with the tribe and pays the tribe a small percentage of the gross revenues?

Perry v. Bakewell Hawthorne, LLC, S233096. (B264027; 244 Cal.App.4th 712; Los Angeles County Superior Court; BC500198.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Does Code of Civil Procedure section 2034.300, which requires a trial court to exclude the expert opinion of any witness offered by a party who has unreasonably failed to comply with the rules for exchange of expert witness information, apply to a motion for summary judgment?

In re R.T., S226416. (B256411; 235 Cal.App.4th 795; Los Angeles County Superior Court; DK03719.) Petition for review after the Court of Appeal affirmed orders in a juvenile dependency proceeding. The court limited review to the following issue: Does Welfare and Institutions Code section 300, subdivision (b)(1), authorize dependency jurisdiction without a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect the child?

Rand Resources, LLC v. City of Carson, S235735. (B264493; 247 Cal.App.4th 1080; Los Angeles County Superior Court; BC564093.) Petition for review after the Court of Appeal reversed an order granting a special motion to strike in a civil action. The court limited review to the following issues: (1) Did plaintiffs' causes of action alleging the breach of and interference with an exclusive agency agreement to negotiate the designation and development of a National Football League (NFL) stadium and related claims arise out of a public issue or an issue of public interest within the meaning of Code of Civil Procedure section 425.16? (2) Did plaintiffs' causes of action arise out of communications made in connection with an issue under consideration by a legislative body?

Regents of University of California v. Superior Court, S230568. (B259424; 240 Cal.App.4th 1296; Los Angeles County Superior Court; SC108504.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Do California public institutions of higher education and their employees have a duty of care to their students while in the classroom to warn them of and protect them from foreseeable acts of violence by fellow students?

Roy Allen Slurry Seal, Inc. v. American Asphalt South, Inc., S225398. (B255558; 234 Cal.App.4th 748; Riverside County Superior Court; RIC1308832.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) In the context of competitive bidding on a public works contract, may the second lowest bidder state a claim for intentional interference with prospective economic advantage against the winning bidder based on an allegation that the winning bidder did not fully comply with California's prevailing wage law after the contract was awarded? (2) To state a cause of action for intentional interference with prospective economic advantage, must the plaintiff allege that it had a *preexisting* economic relationship with a third party with probable future benefit that preceded or existed separately from defendant's interference, or is it sufficient for the plaintiff to allege that its economic expectancy arose at the time the public agency awarded the contract to the low bidder?

Rubenstein v. Doe No. 1, S234269. (D066722; 245 Cal.App.4th 1037; Imperial County Superior Court; ECU08107.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Does the delayed discovery rule in Code of Civil Procedure section 340.1 apply to the accrual of a cause of action against a public entity for purposes of determining the time within which a claim under the Government Claims Act must be made? (2) Does Government Code section 905, subdivision (m), apply to childhood sexual abuse causes of action based on conduct occurring before January 1, 2009?

Ryan v. Rosenfeld, S232582. (A145465; nonpublished order; San Francisco County Superior Court; CGC10504983.) Petition for review after the Court of Appeal dismissed an appeal in a civil action. The court limited review to the following issue: Is the denial of a motion to vacate the judgment under Code of Civil Procedure section 663 separately appealable?

Scher v. Burke, S230104. (B235892; 240 Cal.App.4th 381; Los Angeles County Superior Court; BC415646.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Does Civil Code section 1009 preclude non-recreational use of non-coastal private property from ripening into an implied dedication of a public road?

Shaw v. Superior Court, S221530. (B254958; 229 Cal.App.4th 12; Los Angeles County Superior Court; BC493928.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Did the Court of Appeal err by reviewing plaintiff's right to a jury by writ of mandate rather than appeal? (See *Nessbit v. Superior Court* (1931) 214 Cal. 1.) (2) Is there a right to jury trial on a retaliation cause of action under Health and Safety Code section 1278.5?

Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc., S232946. (B256314; 244 Cal.App.4th 590, mod. 245 Cal.App.4th 63b; Los Angeles County Superior Court; YC067332.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) May a court rely on non-legislative expressions of public policy to overturn an arbitration award on illegality grounds? (2) Can a sophisticated consumer of legal services, represented by counsel, give its informed consent to an advance waiver of conflicts of interest? (3) Does a conflict of interest that undisputedly caused no damage to the client and did not affect the value or quality of an attorney's work automatically (i) require the attorney to disgorge all previously paid fees, and (ii) preclude the attorney from recovering the reasonable value of the unpaid work?

Sierra Club v. County of Fresno, S219783. (F066798; 226 Cal.App.4th 704; Fresno County Superior Court; 11CECG00706, 11CECG00709, 11CECG00726.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents issues concerning the standard and scope of judicial review under the California Environmental Quality Act. (CEQA; Pub. Resources Code, § 21000 et seq.)

Solus Industrial Innovations, LLC v. Superior Court, S222314. (G047661; 229 Cal.App.4th 1291; Orange County Superior Court; 30-2012-00581868.) Petition for review after the Court of Appeal granted a petition for writ of peremptory mandate. This case presents the following issue: Does federal law preempt a district attorney's attempt to recover civil penalties under California's unfair competition law based on an employer's violation of workplace safety standards that resulted in the deaths of two employees?

Sweetwater Union School Dist. v. Gilbane Building Co., S233526. (D067383; 245 Cal.App.4th 19; San Diego County Superior Court; 37-2014-00025070-CU-MC-CTL.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike in a civil action. This case presents the following issues: (1) Is testimony given in a criminal case by persons who are not parties in a subsequent civil action admissible in that action to oppose a special motion to strike? (2) Is such testimony subject to the conditions in Evidence Code section 1290 et seq. for receiving former testimony in evidence?

T.H. v. Novartis Pharmaceuticals Corp., S233898. (D067839; 245 Cal.App.4th 589; San Diego County Superior Court; 37-2013-00070440-CU-MM-CTL.) Petition for review after the Court of Appeal reversed an order in a civil action. The court limited review to the following issue: May the brand name manufacturer of a pharmaceutical drug that divested all ownership interest in the drug be held liable for injuries caused years later by another manufacturer's generic version of that drug?

Tri-Fanucchi Farms v. Agricultural Labor Relations Bd., S227270. (F069419; 236 Cal.App.4th 1079.) Petitions for review after the Court of Appeal affirmed in part and reversed in part a decision of the Agricultural Labor Relations Board. This case presents the following issues: (1) May an employer assert as a defense to a request for collective bargaining under the Agricultural Labor Relations Act (Lab. Code, § 1140, et seq.) that the certified union has "abandoned" the bargaining unit? (2) Did the Board err in granting "make whole" relief (Lab. Code, § 1160.3) as a remedy for the employer's refusal to bargain with the union?

Troester v. Starbucks Corp., S234969. (9th Circ. No. 14-55530; nonpublished order; Central District of California; 2:12-cv-07677-GAF-PJW.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Does the federal Fair Labor Standard Act's *de minimis* doctrine, as stated in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 692 (1946) and *Lindow v. United States*, 738 F.2d 1057, 1063 (9th Cir. 1984), apply to claims for unpaid wages under California Labor Code sections 510, 1194, and 1197?

United Educators of San Francisco etc. v. California Unemployment Ins. Appeals Bd., S235903. (A142858, A143428; 247 Cal.App.4th 1235; San Francisco County Superior Court; CPF 12-512437.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents issues concerning the entitlement of substitute teachers and other on-call paraprofessional employees to unemployment insurance benefits when they are not called to work during a summer school term or session.

United Riggers & Erectors, Inc. v. Coast Iron & Steel Co., S231549. (B258860; 243 Cal.App.4th 151; Los Angeles County Superior Court; VC062679.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issue: May a contractor withhold retention payments when there is a good faith dispute of any kind between the contractor and a subcontractor, or only when the dispute relates to the retention itself?

Vasilenko v. Grace Family Church, S235412. (C074801; 248 Cal.App.4th 146; Sacramento County Superior Court; 34201100097580.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does one who owns, possesses, or controls premises abutting a public street have a duty to an invitee to provide safe passage across that public street if that entity directs its invitees to park in its overflow parking lot across the street?

Wheatherford v. City of San Rafael, S219567. (A138949; 226 Cal.App.4th 460; Marin County Superior Court; CIV1300112.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Must a plaintiff have paid or be liable to pay a property tax to a government entity in order to bring a taxpayer waste action against that entity under Code of Civil Procedure section 526a, or can the payment of other taxes confer standing?

Williams v. Superior Court, S227228. (B259967; 236 Cal.App.4th 1151; Los Angeles County Superior Court; BC503806.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issues: (1) Is the plaintiff in a representative action under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) entitled to discovery of the names and contact information of other “aggrieved employees” at the beginning of the proceeding or is the plaintiff first required to show good cause in order to have access to such information? (2) In ruling on such a request for employee contact information, should the trial court first determine whether the employees have a protectable privacy interest and, if so, balance that privacy interest against competing or countervailing interests, or is a protectable privacy interest assumed? (See *Hill v. National Collegiate Athletic Association* (1994) 7 Cal.4th 1; *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360.)

Williams & Fickett v. County of Fresno, S224476. (F068652; 232 Cal.App.4th 1250; Fresno County Superior Court; 13CECG00461.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Must a taxpayer against whom an escape assessment on personal property has been made exhaust administrative remedies by filing an application with the county’s board of equalization to reduce the assessment if the taxpayer claims that it does not own and has no interest in the assessed property, or does the taxpayer fall within the “nullity” exception to the exhaustion requirement? (2) Is a taxpayer who files an application for changed assessment with the county’s board of equalization subject to a one-year limitations period for paying the assessment and filing an action challenging the assessment, or does the period within which the taxpayer may file such an action begin to run only after the taxpayer has paid the disputed taxes?